FILE COPY

Office - Supreme Court, U. S.
FILED
NOV 14 1936
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 175

MARCUS HAUGE,

Appellant,

vs.

THE CITY OF CHICAGO,

Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

Brief and Argument for Appellant.

THOMAS C. MCCONNELL,
IRWIN T. GILRUTH,
231 South La Salle Street,
Chicago, Illinois.

OWEN RALL,
135 South La Salle Street,
Chicago, Illinois
Counsel for Appellant.

CHICAGO LAW PRINTING CO., 111 N. WACKER DRIVE (COR. WASHINGTON ST.) TEL. FRANKLIN 6321

INDEX.

SUBJECT INDEX.

	PAGE
Official Report of Case	1
Jurisdiction of this Court	2
Statement of the Case	2
Specification of Errors	13
Summary of Argument	14
Argument	16

I.

The requirement in the ordinance complained of that coal in transit by truck from mine to consumer must be dumped in order to get the tare weight of the empty vehicle is an unnecessary and unreasonable restriction on a legitimate business, and is therefore unconstitutional and void under Section 1 of the Fourteenth Amendment to the Constitution of the United States 16

II.

The appellant seeks no discrimination in his favor but only a reasonable manner of checking mine weights which does not nullify the saving to the consumer by reason of his more efficient method of doing business 26

III.

When this ordinance is applied to appellant's business it does discriminate against such business contrary to the Fourteenth Amendment of the Constitution of the United States 32

PAGE

Table of Cases Cited.

City of Chicago v. Kautz, 313 Ill. 196 ..... 19, 32
City of Chicago v. Waters, 363 Ill. 125, 1 N. E. (2d) 396 1
City of Chicago v. Wisconsin Lime & Cement Co., 312 Ill. 520 ..... 11, 12, 27
Dobbins v. City of Los Angeles, 195 U. S. 223 17
Fairmont Creamery Co. v. Minnesota, 274 U. S. 1 17
Hill v. Fetheroff, 236 Pa. 70, 80 Atl. 677 37
Jay Burns Baking Co. v. Bryan, 264 U. S. 504 17
Louis K. Liggett Co. v. Baldrige, 278 U. S. 105 24
May Grain & Coal Co. v. Kansas City, Mo., 10 Fed. Supp. 792 25
Pierce v. Society of Sisters, 268 U. S. 510 17
State v. Nelson, 66 Minn. 166, 68 N. W. 1066 ..... 36, 37
Weaver v. Palmer Bros. Co., 270 U. S. 402 17

Statutes Cited.

Constitution of the United States, 14th Amendment, Section 1 ..... 4, 11, 13, 14, 15, 16, 25, 26, 38
Illinois State Bar Stats. (1935) c. 147, par. 20 4
Illinois State Bar Stats. (1935) c. 147, par. 39 8
Revised Chicago Code of 1931, Section 2939 21
2947 ..... 2, 7, 10, 13, 16
2950 21
2951 21
2955 5
3612 5
3613 5
3614 5
3616 5
3617 5
3623 ..... 3, 5, 17
3342 ..... 6, 9, 10, 20, 21
3343 10
3445 21

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 175

MARCUS HAUGE,

Appellant,

vs.

THE CITY OF CHICAGO,

Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

Brief and Argument for Appellant.

Official Report of Case.

The opinion of the Supreme Court of Illinois is reported under the title, *City of Chicago* v. *Waters,* 363 Ill. 125, 1 N. E. (2d) 396. The majority opinion appears in the printed record in this Court (pp. 45-52) and the dissenting opinion filed by Chief Justice Stone and Mr. Justice Shaw also appears in the printed record (pp. 59-61).

Jurisdiction of this Court.

The jurisdictional statement of the appellant in compliance with paragraph 1 of Rule 12 has been printed by the Clerk and submitted to the Court. The opposing jurisdictional statement of the appellee, accompanied by its motion to affirm or to dismiss, has also been printed and submitted to the Court together with a brief of the appellant in opposition to the motion to affirm or to dismiss.

On October 12, 1936 this Court entered an order that further consideration of the jurisdictional question was postponed to the hearing. We respectfully refer the Court to the jurisdictional statements and brief heretofore filed and shall not repeat our argument in support of the jurisdiction of this Court.

STATEMENT OF THE CASE.

This is an appeal from the judgment of the Supreme Court of the State of Illinois, two of the seven justices dissenting, which affirmed a judgment of The Municipal Court of Chicago, finding the appellant guilty of violating Section 2947 of the Revised Chicago Code of 1931 (R. 29). The violation was in delivering a load of coal weighed at the mine in accordance with the state statutes and trucked to a purchaser in Chicago, without reweighing the coal and obtaining as required by said Section 2947 a public weighmaster's certificate showing the gross, tare and net weight of the load.

The above section provides in substance that every commodity sold in load lots by weight and delivered by truck within the City shall be weighed by a public weighmaster and that a public weighmaster's certificate of the weight for each such load shall be delivered by the driver to the

purchaser of such load at the time of the delivery and before any of the commodity is removed from the vehicle.

Another section of the ordinance, Section 3623 (R. 40-41), provides that the public weighmaster's weight certificate shall state, *inter alia,* the commodity weighed, the date, the name and address of the purchaser or consignee, and when the commodity is loaded in a vehicle, the total or gross weight of the commodity weighed and the conveyance in which it is loaded, the tare weight of the vehicle, and the net weight of the commodity contained in such vehicle. This section also provides:

> "In no case shall any public weighmaster state in his certificate the tare weight of any vehicle until after he shall have weighed the vehicle in such manner as to secure the weight as specified herein" (R. 41).

It was not disputed by the City of Chicago in either of the courts below that in order to comply with the ordinances which have been referred to it would be necessary to unload the coal within the City of Chicago to obtain the tare weight of the vehicle, then to reload the coal to obtain the gross weight of the vehicle and the coal, and that all of this must be done in order to obtain a public weighmaster's certificate which can be delivered to the purchaser *before any of the coal is removed from the vehicle on the premises of the purchaser.*

The coal which was delivered in the instant case was obtained from the mine of the Morris Coal and Mining Company at Morris, Illinois, and had been graded at the mine and weighed over State inspected scales (R. 13, 17-18) and the appellant was in possession of a delivery ticket filled in in accordance with the provisions of the statutes of the State of Illinois, showing the gross, tare and net weight of the load (R. 11). (The State statute referred

to is Ill. State Bar Stats., 1935, c. 147, par. 20, which is printed in full on page 9 of the appellant's printed statement as to jurisdiction, which is already before this Court).

It was not and is not contended here that the appellant was possessed of a public weighmaster's weight certificate as required by this ordinance. The prosecution was defended in the lower court on the ground that the ordinance, as applied to the appellant's business, is unconstitutional under Section 1 of the Fourteenth Amendment of the Constitution of the United States, in that it is unreasonable in its provisions requiring the rehandling of coal already weighed in accordance with the laws of the State of Illinois applicable to the place where the coal was placed upon the truck (R. 21).

The consumer in Chicago buys this coal from the mine either directly or through a local dealer, agent or broker (R. 17, 18). If a local dealer or broker intervenes in the transaction, the order is forwarded to the mine. A trucker who owns his own truck, such as the appellant in this case, is given this order at the mine office for delivery to the consumer in Chicago (R. 13). Upon the receipt of the order the trucker runs his empty truck over a State inspected scale at the mine and the mine weighmaster certifies the tare weight (*i. e.*, the weight of the empty vehicle) (R. 18). The trucker then drives off the scale to an immediately adjacent tipple and loads his truck with the kind of coal called for in the order and immediately returns to the same scale for a weighing of his gross load (*i. e.*, the weight of the coal plus the weight of the vehicle) (R. 14). The net weight of the load is then obtained by subtracting the tare weight from the gross weight, and the tare, gross and net figures are written on a delivery ticket by the mine weighmaster (R. 18).

The ordinance in question permits persons owning scales within the City of Chicago to be licensed as public weighmasters and their employees to be licensed as deputies. A two thousand dollar bond must be posted and a weighmaster's seal procured. The coal dealer owning a scale and licensed as a public weighmaster by these sections of the ordinance is permitted to weigh his own coal over his own scale. (The sections of the Revised Chicago Code of 1931 which provide for the appointment of such weighmasters, in so far as relevant here, are Sections 2955, 3612, 3613, 3614, 3616, 3617, and 3623, which are printed in full on pages 3 to 7, inclusive, of the appellant's statement as to jurisdiction, and also appear in the printed record (pp. 32, 38-39, 40-41) and are therefore not repeated here.)

It was shown that the Morris Coal and Mining Company could not obtain a license as a public weighmaster in the City of Chicago for the year 1935, although it was able to procure such a license prior to that time (R. 18). The ostensible reason for this refusal was that the Company was resident outside of the City of Chicago and therefore not embraced within the provision of Section 3612 of the Revised Chicago Code of 1931, providing who "shall be eligible for appointment as a public weighmaster *in the city of Chicago*" (R. 38; italics ours).

It was not disputed in either of the courts below that under the ordinances of the City of Chicago a non-resident owning a scale outside of the City of Chicago could not obtain a license as a public weighmaster. The majority of the Supreme Court of Illinois held (R. 50) that the weighing of the coal over the State inspected scale at Morris, Illinois, was not a compliance with the ordinance, and the minority opinion expressly stated (R. 60) that "the complaining mining companies cannot obtain weighmaster's certificates, thus effectually shutting out of the

markets of the City of Chicago a commodity that the people have a right to buy."

The evidence shows that if coal which had been weighed at the mine is required to be unloaded and weighed again inside of the city limits of Chicago the cost of this rehandling is approximately 50c to $1.00 a ton and would require the establishment of a coal yard inside the City of Chicago where the unloading and weighing could be done (R. 19). This cost is occasioned by the labor involved in unloading the coal from the truck in order to get the tare weight and reloading it again.

It is also apparent that such rehandling of bituminous coal tends to break down the grade. If the grade is broken down the coal cannot be delivered without violating Section 3342 of the Revised Chicago Code of 1931, which is printed in full on page 16 of our brief in opposition to the appellee's motion to dismiss the appeal or affirm the judgment and is also set forth in the record (pp. 33-35). Obviously, there is no way for the trucker to regrade his coal after leaving the mine unless he maintains a coal yard in the City of Chicago and equips it with grading screens and a tipple.

No charge of short weight is involved in the present proceeding. The appellant testified, without contradiction, that:

> "I was not weighed by the city inspector. I asked if they wanted to weigh it and they said no, they knew our weights were right and they didn't want to bother us with it. The sealer who stopped me said that" (R. 14).

Ralph McElvain, the president of the Mining Company whose coal is involved, testified that his company had no complaints from its customers as to short weight (R. 19).

After the opinion of the Supreme Court of Illinois was originally filed in this case, and pending a rehearing, the City Attorney of Ottawa, Illinois, the State's Attorney of LaSalle County, Illinois, the City Attorney of Morris, Illinois, and the State's Attorney of Grundy County, Illinois, filed a petition in the court below (R. 53-57) as *amici curiae* praying that the court allow a rehearing on its own motion, in which petition they stated among other things:

(a) That holding Section 2947 valid imposes an embargo on Grundy and LaSalle County coal because the handling costs of approximately $1.00 per ton required to comply with the ordinance makes it impossible for mine operators to compete with Chicago dealers.

(b) That the decision will close the Illinois Valley mines which are not adjacent to rail connections and that approximately two thousand families in Grundy County alone are dependent for their livelihood upon the mines affected by the decision.

(c) That the effect of this ordinance is to impose a barrier on trade in commodities produced in these counties and sold by weight in load lots in Chicago, and affords a method by which various communities of the State can erect trade barriers between themselves contrary to the public interest.

(d) That the method of weighing makes it impossible for farmers to weigh their produce in Chicago in that it compels a dumping of the load.

(e) That weighing the loaded truck before delivery and a return to the scales after delivery to determine the tare weight of the truck would as a practical matter give the same protection to the consumer and would provide a reasonable method of weighing which the mines can comply with.

(f) That the Court should take judicial notice that there are no so-called public weighmasters' scales in Chicago except in coal yards competing with the Illinois River Valley mines and that such yards do not permit the dumping of coal, so that a compliance with the ordinance is impossible.

No answer was filed to this petition, but the petition was denied (R. 61).

The City of Chicago attempts to justify the enforcement of this ordinance on the theory that the ordinance is *necessary* in order to furnish the customer protection against short weight. In considering the merit of the City's theory it should be noted that there are other penal provisions of the ordinance which furnish adequate safeguards to the purchaser respecting coal which has already been weighed once on a State inspected scale pursuant to the general statutes of the State in force where the truck of coal was loaded.

The State statute on weights and measures, which has already been referred to and which is printed on page 9 of the appellant's jurisdictional statement, requires that a delivery ticket showing the gross, tare and net weight of coal shall be surrendered upon demand *to any city inspector of weights and measures* for his inspection and shall be delivered to the purchaser of the coal at the time of the delivery of the fuel.

Section 39 of the same chapter of the Illinois statutes (Ill. State Bar Stats., 1935, c. 147, par. 39) provides, *inter alia,* that any person who uses in selling any commodity any weighing device which has not been sealed by the State Director of Trade and Commerce, or by a city inspector of weights and measures, within one year, or who shall sell less than the quantity he represents, or who shall

violate any provision of the act for which a specific penalty has not been provided, "shall be guilty of a misdemeanor, and shall be punished by a fine of not less than $20, nor more than $200, or by imprisonment for not more than three months, or by both such fine and imprisonment, upon a first conviction, in any court of competent jurisdiction; and upon a second or subsequent conviction in any court of competent jurisdiction he shall be punished by a fine of not less than $50 nor more than $500, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment."

Section 3342 of the Revised Chicago Code of 1931, set out verbatim in the record (R. 33-35) requires a delivery ticket similar to that provided by the State statute. This section also provides for the surrender of the delivery ticket to the city inspector of weights and measures or to the purchaser, on demand, and provides that,

> "whenever said officer or any of his deputies, or the purchaser or intending purchaser, or his agent or representative, or the person to whom delivery is to be made, shall demand that the said weights shown by said ticket or tickets be verified, it shall thereupon become the duty of the person, firm or corporation delivering such fuel to convey the same forthwith to some public scale selected by the inspector of weights and measures of the city of Chicago, or any of his deputies, or the purchaser or intending purchaser of the fuel being delivered, or his agent or representative, or the person to whom delivery is to be made, in the particular locality where the solid fuel is to be delivered, or to any private scale in the particular locality where the owner thereof shall consent to such use, and permit the weighing of the solid fuel, together with conveyance and equipment, for the purpose of

ascertaining the gross weight thereof, and shall, after the delivery of such fuel, return forthwith with the conveyance and equipment used in the delivery of such solid fuel to the same scale and permit the weighing of said conveyance and equipment for the purpose of verifying the net weight of the solid fuel, as shown by the said ticket or tickets."

The following section, Section 3343 of the Revised Chicago Code of 1931 (R. 35-36), imposes a fine of not less than $25.00 nor more than $200.00 for the offense of delivering or attempting to deliver fuel within the City of Chicago of a quantity less than that called for by the delivery ticket or tickets. This section also imposes a fine of not less than $10.00 nor more than $50.00 for making or attempting to make a delivery without a delivery ticket or without delivering such delivery ticket to the purchaser or the city inspector of weights and measures before the fuel is removed from the conveyance. It further imposes a fine of not less than $10.00 nor more than $50.00 for any violation of Section 3342, just referred to, for which no other specific penalty is provided. This latter provision imposes a penalty for refusal to verify the gross, tare and net weight of the loaded vehicle upon the demand of the city inspector of weights and measures or of the purchaser, as provided in Section 3342.

The majority opinion of the Supreme Court of Illinois held that Section 2947 of the ordinances, under which the appellant was convicted and whose constitutionality is here challenged, furnished a reasonable method of reweighing a load of coal which had previously been weighed in accordance with the State statute, on the theory that such reweighing was a natural and reasonable method of weighing a load of coal sold and delivered *from a coal yard in the City of Chicago,* and that to recognize the

claim of the appellant that the ordinance is unconstitutional as applied to the appellant would discriminate between local dealers and non-residents. The court held that if it was necessary in order to comply with the ordinance to establish a coal yard inside the City of Chicago that was merely an incidental problem to be solved by the mining company.

The court below referred to its holding in *City of Chicago* v. *Wisconsin Lime & Cement Co.*, 312 Ill. 520 (decided in the year 1924, before the business of trucking coal from mine direct to consumer had come into existence) and although conceding that the attack on the validity and constitutionality of the ordinance made in the present case is not the same as was decided in that case, yet held that the difference in methods of transportation involved in that case and in the present case did not justify holding the ordinance unconstitutional as applied to the business here involved. The court held that the ordinance was not a violation of the Federal Constitution (R. 47-52).

Two of the judges dissented in an opinion (R. 59-61), stating that the effect of the ordinance is to confer a monopoly in the coal business upon dealers residing within the City of Chicago to the exclusion of other citizens residing outside of the city, that this is apparent from the requirement that the empty truck be weighed before the load is delivered to the purchaser and that they could not perceive any reason why the purchaser could not as well be protected by weighing the empty truck after delivery, which they said would give an accurate net weight, "which is the only point as to which the public may require protection, and if that is the true purpose of the ordinance, which it obviously is not, it would serve all legitimate purposes." They held it clearly unreasonable to require that a load of coal coming into Chicago be unloaded, the truck

weighed, then the coal reloaded and weighed again, and that the extra and useless handling could inure only to the benefit of local dealers and could result only in penalizing the consumer and the outside producer. They said that the ordinance was unconstitutional because it arbitrarily interferes with private business and imposes unusual and unnecessary regulations upon a lawful occupation. They distinguished the case of *City of Chicago* v. *Wisconsin Lime & Cement Co.*, 312 Ill. 520, on the ground that in that case the dealer was permitted to be appointed a public weighmaster, whereas in the present case the record shows that the mining company cannot obtain a weighmasters' license. The dissenting judges concluded their opinion as follows:

> "To put the unreasonable and unnecessary burden of unloading, weighing the truck and reloading the coal, upon those who would offer coal to residents of the city of Chicago, from the outside of that city, is not in the interest of the public welfare and is not necessary to secure honest weights.
>
> "It is quite as much in the interest of the public welfare that the people of the city of Chicago be afforded access to cheap markets for the necessities of life as it is that weights be watched. To so restrict access to such market by putting such unnecessary expense on the purchaser is clearly unreasonable.
>
> "It is likewise an unjust discrimination against large communities that happen to be so situated as to enable them to take coal from the ground cheaply and thus give a livelihood to thousands working in that business.
>
> "It is well known that there are many sources of cheap coal within trucking distance of Chicago, and that by loading directly onto a truck at the mine and

unloading directly into the consumer's bin, many handling charges are avoided. While such competition is clearly disadvantageous to Chicago coal dealers, it is certainly advantageous to the mine owners and those citizens of Chicago who wish to purchase this kind of coal. No one can doubt the legal right of these mine owners and consumers to deal directly with each other if they choose so to do, and, in our opinion, an ordinance which throws an artificial and unreasonable barrier across the path of this commerce, without any corresponding benefit to the health, morals, safety or welfare of the people, is void" (R. 60-61).

Specification of Errors

(R. 61-62, 108-109).

1. The Supreme Court of Illinois erred in holding that Section 2947 of the Revised Chicago Code of 1931, under which appellant was convicted, does not deny to the appellant the equal protection of the laws guaranteed to the appellant by Section 1 of the Fourteenth Amendment to the Constitution of the United States.

2. The Supreme Court of Illinois erred in holding that said Section 2947 does not deprive the appellant of liberty and property in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

3. The Supreme Court of Illinois erred in affirming the judgment of The Municipal Court of Chicago.

SUMMARY OF ARGUMENT.

I. The ordinance here involved is unreasonable in requiring coal already once weighed to be unloaded in order to be weighed again before delivery to the consumer, because reasonable methods exist for verifying the weight which would accomplish every purpose of the existing ordinance without requiring such unloading. Other provisions of the State statutes and of the Chicago ordinances adequately protect consumers against short weights. Other sections of the city ordinances also recognize the unreasonableness of requiring a vehicle already loaded to be unloaded before delivery for the purpose of obtaining the tare weight. The appellee has conceded that the unloading requirement is drastic and cannot escape this concession, as it has attempted to do in this Court, by arguing that the ordinance does not require such unloading. The construction of the ordinance (as requiring such procedure) by the Illinois Supreme Court is binding on the parties and on this Court. In deciding that this ordinance is reasonable the Illinois court ignored the vitally material fact that the coal had been once weighed at the mine over State-tested scales. Requiring appellant to establish a coal yard to comply with this ordinance is unreasonable. It is as much in the public interest that the people of Chicago be afforded access to cheap markets for necessities as it is that weights be watched. This ordinance nullifies economies effected by trucking coal direct from the mine to the consumer. The ordinance is unreasonable as applied to appellant's business and is unconstitutional and void under Section 1 of the Fourteenth Amendment.

II. The appellant is not seeking a discrimination in his favor. He is in a different business than that of operating a Chicago coal yard and while the ordinance is reasonable as to such a coal yard, which alone it was originally designed to regulate, it is not reasonable when applied to the appellant's business, which arose after the passage of the ordinance. The ordinance does not impose an equal loss upon the local dealers and upon the appellant because it is not the ordinance which imposes on the local dealer the burden of operating a coal yard, rather it is his method of doing business, whereas it is the ordinance which requires the appellant to operate a local coal yard in order to have some place to dump and reweigh his coal. The ordinance gives the local dealer the privilege of weighing his coal at the point of original loading and denies a similar right to the appellant.

III. The City of Chicago is by this ordinance discriminating against the trucking of coal directly from the mine to the Chicago consumer for the improper purpose of protecting local coal dealers from competition. The unreasonable discrimination against the appellant's method of doing business results in loss of his liberty and property and also is detrimental to the public. The ordinance discriminates against the appellant in allowing a local coal dealer to be licensed as a public weighmaster to weigh his own coal in his own yard and in denying that right to the appellant. Because the ordinance is unreasonable and unnecessary and is discriminatory it is void under Section 1 of the Fourteenth Amendment.

ARGUMENT.

I.

The requirement in the Ordinance complained of that coal in transit by truck from mine to consumer must be dumped in order to get the tare weight of the empty vehicle is an unnecessary and unreasonable restriction on a legitimate business, and is therefore unconstitutional and void under Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Section 2947 of the Ordinance in question (R. 29) provides:

> "Every load of any commodity, produce or other article or articles of merchandise sold in load lots by weight, delivered by wagon, truck or other vehicle within the city, shall be weighed by a public weighmaster; a certificate of weight for each such load, issued by such public weighmaster, shall be delivered by the driver or person in charge of the wagon, truck, or other vehicle used in the delivery, to the purchaser or consignee of such load, or to his or their agent at the time of the delivery and before any of the commodity, produce or other article or articles of merchandise is removed from the vehicle * * *."

In order to obtain such a certificate from a public weighmaster, the weighing must take place in accordance with

Section 3623 of the ordinances which provides (R. 41) among other things,

> "In no case shall any public weighmaster state in his certificate the tare weight of any vehicle until after he shall have weighed the vehicle in such manner as to secure the weight as specified herein; * * *."

The vice of the above sections is that they require appellant and others engaged in the business of trucking coal direct from mine to consumer to dump the load en route in order to permit a so-called public weighmaster to certify the tare weight. This is an unnecessary and unreasonable restriction on appellant's business.

While the power to enact a reasonable ordinance regulating methods of weighing coal or other commodities sold in load lots exists, this power is subject to the definite limitation that the State cannot, under the guise of protecting the public arbitrarily interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions on them.

Jay Burns Baking Co. v. *Bryan*, 264 U. S. 504, 513;

Dobbins v. *City of Los Angeles*, 195 U. S. 223, 235-240;

Pierce v. *Society of Sisters*, 268 U. S. 510, 534, 535;

Weaver v. *Palmer Bros. Co.*, 270 U. S. 402, 412, 415;

Fairmont Creamery Co. v. *Minnesota*, 274 U. S. 1, 9, 11.

Appellant's contention under this point is not that every regulation is unconstitutional but that the ordinance in question is unreasonable and therefore void and unconsti-

tutional because it is not necessary to require—as this ordinance does—the rehandling of the coal and the reweighing of the empty vehicle before delivery in order to get a tare weight of the vehicle. The issue here is not between the present ordinance and absence of all regulation, but the issue is between the unreasonable regulation imposed by this ordinance and some reasonable ordinance which the appellee has ample power to enact.

It has been pointed out in our jurisdictional statement and the brief filed in opposition to the City's motion to dismiss this appeal that a reasonable ordinance can be enacted which would obviate the vice of the present regulation without losing a single benefit intended to be accomplished by it and which would nevertheless eliminate entirely the cause of complaint against the present ordinance. This can be done by providing:

(a) That the tare weight be registered and stenciled on the vehicle and the gross weight be certified by a public weighmaster, or

(b) That the gross weight of the vehicle and load be determined by a public weighmaster before delivery of the coal to the customer and that the tare weight be determined and certified on the delivery ticket by the public weighmaster after the vehicle is unloaded and before the customer shall become liable for the payment of the price of the coal.

Either method obviates the unreasonable provision of the present ordinance that the coal be unloaded en route from mine to customer, and yet each would compel a weighing on a public weighmaster's scale inside the city limits and would provide for the delivery to the customer of a public weighmaster's certificate. The second method insures the return of the trucker to the public weigh-

master to ascertain the tare weight of the vehicle by the provision that the customer be not required to pay for the coal until the tare weight is thus certified. This would permit the dumping of the coal on the premises of the buyer after obtaining a certification of the gross weight and would compel a return to the scales for a certification of the tare weight.

The only reason ever suggested by the City as to why it was necessary to apply this ordinance to appellant's business is stated by the counsel for the City in their brief in support of the motion to dismiss this appeal. That suggestion clearly discloses the weakness of their case. They say:

> "Furthermore, on the long haul to Chicago, perhaps a night haul, a portion of the load may be lost, some of it may be bartered for gasoline en route, and there is no assurance that the customer would receive the quantity weighed at the mine."

All or any of these things may equally well be done within the city limits of Chicago by a dishonest driver for a local dealer after obtaining a weighmaster's certificate. Where coal is shipped by truck from the mine, a weighing of the loaded truck in Chicago as suggested by us would immediately disclose any discrepancy in weight as compared with that shown on the mine delivery ticket issued in accordance with the State statutes. In the instant case, there is no short-weight, nor is there any logical basis for a blanket assumption of dishonesty. The Supreme Court of Illinois, in the case of *City* v. *Kautz,* 313 Ill. 196, held that a section of the ordinances in question which attempted to give the city officials power to reweigh coal which had already been weighed was unreasonable, and said:

> "Under these ordinances the only way for the coal dealer to cheat his customers is to steal coal from the

wagon after it has been weighed. This he could not do unless he entered into a conspiracy with his drivers. * * * The likelihood of a dealer entering into a conspiracy with his drivers to steal his customers' coal is so remote that the regulation cannot be sustained on that ground."

In fact, when the other provisions of the present ordinances and of the State statutes are read it is quite clear that the purchasers of coal are adequately protected by the check imposed on mine weights by Section 3342 of such ordinances (R. 33-35), which is set forth at page 9 of this brief, and which requires the seller to verify the weight by a reweighing upon demand by the purchaser or by the city inspector of weights and measures.

To that provision there can be no valid objection, because its enforcement does not require *unloading and reloading* of the coal before delivery. It permits the weighing of the coal and vehicle together before unloading the coal on the premises of the purchaser and permits the return after the delivery to the scale in order to determine the tare weight. Other sections of the ordinance provide for a fine upon conviction of the offense of giving short weight (R. 31).

In the instant case, the proof shows a valid weighing under the State Statutes over State inspected scales at Morris, Illinois (R. 14, 18). As pointed out, to obtain a weighmaster's certificate, this appellant would have had again to weigh his coal and to comply with the ordinance would have had to dump his load. That this rehandling charge is unnecessary and consequently unreasonable was clearly perceived by the dissenting justices when they stated (R. 59):

"In our opinion the ordinance set forth in the foregoing opinion is unreasonable and should be held void.

> * * * This is apparent from the requirement that the empty wagon or truck must be weighed before the load is delivered to the purchaser. We cannot perceive any reason why the purchaser could not as well be protected by weighing the empty wagon or truck after delivery. This would permit hauling the load across public scales to obtain the gross weight, the unloading of the commodity, followed by weighing the empty wagon or truck to obtain the tare weight, and the subtraction of the tare from the gross to obtain the net. This procedure would give an accurate net weight, which is the only point as to which the public may require protection, and if that is the true purpose of the ordinance, which it obviously is not, it would serve all legitimate purposes. Under such an ordinance, producers of coal or other commodities who live outside of Chicago could deliver their produce within that city and the residents of that city could have the benefit of whatever savings might be involved. It is clearly unreasonable to require that a load of coal coming into Chicago be unloaded, the truck weighed, then the coal reloaded and weighed again. This extra and useless handling charge can inure only to the benefit of local dealers and it can only result in penalizing the consumer and the outside producer."

The requirement that the tare weight must be officially determined prior to delivery, although the truck is already loaded, is inferentially recognized as unreasonable by the Chicago City Council itself, because under all other sections of the City's ordinance dealing with a verification of a tare weight after the commodity is loaded such tare weight may be determined after the delivery of the load to the purchaser. See Sections 2939, 2950, 2951, 3342 and 3445 (R. 28, 29, 30, 33, 37).

Recognizing the substantial character of appellant's complaint, the City of Chicago, after acting to the contrary in its administration of the ordinance for many years and after contending to the contrary in both courts below, now, in its motion to dismiss filed herein, seeks to evade the issue of whether the unloading requirement is unconstitutional by saying:

> "This [the ordinance] leaves the manner and time of ascertaining the tare weight to the public weighmaster and the provision is by no means so drastic as appellant's counsel or the dissenting justices state."

Significantly, appellee does not intimate any other method of complying with the ordinance than by unloading and reloading the truck before delivery. On the contrary, in its brief in support of its motion to dismiss it denies any validity to the other methods of checking the mine weight suggested by the dissenting justices or by the appellant.

Had the Supreme Court of Illinois construed this ordinance as not requiring appellant to unload and reload his coal en route to the consumer, the complaint made by appellant in the court below would have been obviated and the appellant would not now be appealing to this Court. However, that Court instead determined that it is necessary to dump and reweigh the load in order to get a weighmaster's certificate. It said (R. 50):

> "It is more convenient, and doubtless less expensive, for the particular dealer to weigh his truck, both empty and loaded, on the public weighmaster's scale at Morris. *This, however, is not a compliance with the ordinance.* The defendants claim it is unreasonable to require them to unload their trucks after enter-

ing Chicago, weigh the truck empty and then reload and make delivery, and that the coal is always damaged and that there is always a loss of coal occasioned by the unloading and reloading." (Italics ours.)

Further on in its opinion the Court said of appellants (R. 52):

"They have merely elected to do their business in a manner more convenient to them and different from the method prescribed by the ordinance."

Mr. Chief Justice Stone of the Illinois Supreme Court and Mr. Justice Shaw, dissenting, recognized the vice inherent in the ordinance and said (R. 59):

"It is clearly unreasonable to require that a load of coal coming into Chicago be unloaded, the truck weighed, then the coal reloaded and weighed again."

It is, therefore, clear that in both the majority and minority opinions the court construed the ordinance as requiring a reweighing involving a rehandling of the coal in the City of Chicago. This is in conformity with the previous contentions of the appellee and with its methods of administering the ordinance for many years, and the contrary suggestion is merely a tardy admission that the requirement that the load be rehandled is "drastic" and unreasonable.

The majority opinion of the court below stated (R. 48):

"It is immaterial to the issues here that the coal in question was weighed outside of the City of Chicago on State-tested scales."

This statement indicates that the court ignored facts which were very material to a proper determination of the

reasonableness of the ordinance. The fact that coal shipped by truck from mine direct to consumer has been in the first instance weighed over State-tested scales is an exceedingly important factor in determining what additional regulations are reasonable, because the entire ostensible purpose of the ordinance involved here is the ascertainment of correct weights. We respectfully submit that the reasonableness of the ordinance as applied to the business of the appellant was not properly determined by the Supreme Court of Illinois because it excluded as immaterial the vitally important fact that appellant's load had been once weighed on proper scales.

A consideration of whether the harsh and concededly drastic measure here applied to appellant's business is necessary for accomplishing the end sought cannot be avoided, because the necessity for an ordinance bears directly on its reasonableness. As said by this Court in the case of *Louis K. Liggett Co.* v. *Baldrige,* 278 U. S. 105, 113:

> "A state cannot, 'under the guise of protecting the public,' arbitrarily interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them.' "

There can be no doubt that if this ordinance is held valid, it means the complete and total destruction of appellant's present business. The Supreme Court of Illinois said:

> "The facts, if there be such, that it may be necessary to establish coal yards in Chicago, ship by rail in car-load lots, unload from the car and deliver to the purchaser, or submit to an unloading and re-weighing of the coal in the event that coal moves into Chicago by trucks, are incidental problems, to be solved by the coal company in the event it desires to sell in the Chicago market" (R. 51).

An ordinance which requires a coal yard to be established as a condition precedent to doing a coal business has been held unconstitutional in the case of *May Grain & Coal Co.* v. *Kansas City, Mo.*, 10 Fed. Supp. 792. In that case the city was enjoined from enforcing an ordinance which required all retail coal dealers in Kansas City to "possess and own proper equipment for the operation of such retail business within the limits of the city; such equipment shall consist of a coal yard or station with reasonable facilities therefor, an office and a wagon scale of at least five ton capacity."

The Court said:

> "The enforcement of the ordinance against the plaintiff has destroyed that business or will do so unless the city is enjoined from such enforcement. This would result in depriving it of 'property without due process of law' within the first section of the 14th Amendment to the National Constitution.
>
> "The city would have no right to do this unless it was essential to protect the residents of the city against imposition. • • •
>
> "To the extent that the ordinance required an established place within the city, it was unreasonable and thus deprived plaintiff of its property without due process of law."

The ordinance in question takes from appellant and others similarly situated ruthlessly and unreasonably their means of livelihood, and its enforcement will close down the mines located in the Illinois River Valley (R. 54).

We submit that no ordinance which produces results so contrary to rights of the general public as are produced by this ordinance can have any presumption in-

dulged in its favor. As stated by the dissenting justices (R. 60):

> "It is quite as much in the interest of the public welfare that the people of Chicago be afforded access to cheap markets for the necessities of life as it is that weights be watched. To so restrict access to such market by putting such unnecessary expense on the purchaser is clearly unreasonable."

Since the regulation is unreasonable when applied to the appellant's business, it is, under the cases cited under this heading, unconstitutional and void under Section 1 of the Fourteenth Amendment to the Constitution of the United States.

II.

The appellant seeks no discrimination in his favor but only a reasonable manner of checking mine weights which does not nullify the saving to the consumer by reason of his more efficient method of doing business.

The Supreme Court of Illinois said in its majority opinion (R. 50):

> "To recognize the demand of the defendants would be to discriminate between the local truckmen and dealers in Chicago in favor of non-residents."

It further said (R. 52):

> "They have merely elected to do their business in a manner more convenient to them and different from the method prescribed by the ordinance."

We cannot emphasize too strongly the fact established by the uncontradicted evidence that this "more convenient"

method of doing business results in a saving to the consumer of anywhere from fifty cents to a dollar a ton on each ton of coal purchased. It is not the fact that this method is convenient that is important but the fact that it is soundly grounded in a public policy which demands that a saving in the cost of a necessity of life be made available to the public.

The ordinance in question was obviously designed to furnish a certification of an original weighing taking place within the city limits of Chicago. This is further evidenced by the facts that it was enacted before the building of hard roads made possible the trucking of coal from the mines to the Chicago market and that only the coal dealer in Chicago was permitted to be his own "public weighmaster".

It was held reasonable as applied to the business of selling coal from a Chicago coal yard by the Supreme Court of Illinois in the case of *City of Chicago* v. *Wisconsin Lime & Cement Co.*, 312 Ill. 520, because (p. 524):

> "The ordinance is liberal in permitting dealers themselves to be appointed weighmasters or have their own employees appointed deputies, for their own convenience."

A non-resident cannot be appointed a weighmaster under the ordinance.

The fact that the ordinance is reasonable as applied to a coal dealer doing business by one method does not prove it reasonable as to a dealer doing business by an entirely different but equally lawful method.

Since its passage a new method of marketing and selling coal has been developed. This is the business of trucking coal weighed at the mine in accordance with State statutes directly to the consumer in Chicago. *It is this new busi-*

ness in which the appellant is engaged. It grew up because of large savings to the consumer entailed by saving the handling charges amounting to approximately a dollar a ton involved when coal is sold through a coal yard (R. 19).

The department of weights and measures of the City of Chicago, by applying this ordinance to this new method of doing business, has compelled the rehandling of the coal in the City of Chicago and the consequent result is the nullification of all the saving resulting from this new method of marketing coal.

If this saving to the consumer is to be legally barred merely because coal was being sold in Chicago only through a coal yard at the time of the passage of this ordinance, then the coal business is placed in a "strait-jacket" and all progress in more economical methods of marketing coal is forever precluded. When we contend that the more economical method of selling coal under regulations which are merely designed to check weights should be permitted without requiring a rehandling of the coal, we ask for no discrimination but merely ask that the Chicago market be made free.

As the minority opinion says (R. 60-61):

> "It is well known that there are many sources of cheap coal within trucking distance of Chicago, and that by loading directly onto a truck at the mine and unloading directly into the consumer's bin, many handling charges are avoided. While such competition is clearly disadvantageous to Chicago coal dealers, it is certainly advantageous to the mine owners and those citizens of Chicago who wish to purchase this kind of coal. No one can doubt the legal right of these mine owners and consumers to deal directly with each other if they choose so to do, and, in our opinion, an

ordinance which throws an artificial and unreasonable barrier across the path of this commerce, without any corresponding benefit to the health, morals, safety or welfare of the people, is void."

The statement in the majority opinion to the effect that holding this ordinance unconstitutional would discriminate against Chicago dealers and truckers fails to recognize that a dealer selling coal direct from mine to consumer is not in the same business as a dealer selling coal from a local coal yard.

The majority opinion further states (R. 49):

"It is a matter of common knowledge that enormous quantities of coal are moved by both rail and water to Chicago and there held in coal yards, bins, or structures for the storage of coal until moved therefrom to the purchaser, and occasionally coal may be hauled from the car or vessel in vehicles direct to the consumer. As to coal thus transported and sold, an ordinary and natural way to regulate the weighing of the load would be to weigh the vehicle empty and then weigh the same vehicle after it is loaded for delivery to the vendee."

We agree that as to coal thus transported, the ordinance furnishes a reasonable method of obtaining an original weight which the dealer must determine in any event, and regardless of the ordinance, in order to know how much he sells his customer. The only burden imposed by the ordinance on the local coal dealer selling from a yard is that of giving a $2000.00 bond as a public weighmaster and supplying himself with a public weighmaster's seal. He then does the weighing himself or by his employees who may under the ordinance be deputized as weighmasters (R. 38).

If, however, the same dealer wants to sell coal direct from mine to consumer he must under this ordinance bring the coal into his yard and reweigh it even though it has been weighed and graded at the mine in accordance with State statute. *The fact that the dealer is a resident or non-resident is of no significance* except as it bears on the method of doing business. The significant thing is that the new method of business is discriminated against by compelling it to undergo the same method of weighing as is necessary to obtain the original weight where coal is graded and weighed from an indiscriminate mass in a coal yard.

The two businesses are different and the Supreme Court of Illinois failed to perceive that "what is ordinary and natural" as a regulation for the business described by the court is for that very reason extraordinary and unnatural and therefore unreasonable when applied to the situation presented here.

It is clear, therefore, that this Court can declare the ordinance unconstitutional as an unjust and unreasonable restriction on appellant's business without discriminating in the slightest in favor of non-residents as against residents. The Chicago dealer would then be free to go into the same business without rehandling the coal in his yard in Chicago. The original mine weights having been certified in accordance with State laws, the only regulation necessary is to check these weights and to do this we have pointed out that it is not necessary to go through the burdensome procedure imposed by this ordinance. As to this method of doing business, both Chicago and non-resident dealers would be placed on the same basis. It is also obvious that declaring this ordinance unconstitutional when applied to the appellant's business does not make it unconstitutional when applied to obtaining a cer-

tificate of weight of an original weighing of coal sold from a Chicago coal yard.

The majority opinion of the Supreme Court of Illinois is also disclosed to be based on a false premise when the Court says (R. 50):

> "Such loss sustained by unloading and reloading however, is common to those dealers who maintain coal yards and bins in the city of Chicago for the sale of coal and who comply with this ordinance."

What the court here compares is the two methods of doing business, namely, the operation of a local coal yard, and the selling of coal direct from mine to consumer.

Contrary to its statement, the loss occasioned is not common to both because the *rehandling* occasioned by operating a coal yard *is not caused by the ordinance.*

The local dealer's loss in rehandling the coal arises by virtue of his method of doing business—not from the operation of the ordinance. Since the coal is shipped by rail into the yard, where it is dumped as an indiscriminate mass, it must be weighed and graded whether there is any ordinance or not. *The ordinance was not originally enacted to cause or require this rehandling but to regulate it* and, since the coal must be weighed in any event, there can be no objection on the part of the operator of a coal yard to the method of weighing prescribed by the ordinance since he may himself be a public weighmaster. Applied to appellant's business, however, where there is no inherent need for dumping the coal after it leaves the mine the further handling *is caused solely by the operation of this ordinance.*

If after coal has been weighed and graded in a coal yard and has left the yard in transit to the consumer the

City of Chicago should step in and say it had to be reweighed and rehandled an analogous case would be presented. This second weighing would be an unreasonable and unnecessary restriction on the business of operating a coal yard. The Supreme Court of Illinois has so held in the case of *City of Chicago* v. *Kautz*, 313 Ill. 196.

We submit that it is clear that appellant seeks no discrimination. If he starts to operate a coal yard in the City of Chicago, he of course becomes subject to the ordinance. It is the only way he could obtain an original weight, because the coal would come to him in the first instance as an indiscriminate mass which he would have to weigh somehow. Conversely, if the Chicago dealer starts to sell coal direct from mine to consumer, he is not subject to the ordinance if it is held unconstitutional as to that business.

III.

When this ordinance is applied to appellant's business it does discriminate against such business contrary to the Fourteenth Amendment of the Constitution of the United States.

We have pointed out as a practical matter this ordinance excludes from the Chicago market appellant's method of doing business. It would be, of course, almost impossible for the appellant to prove improper motive of the law enforcement officers of the City of Chicago. In their brief in support of the motion to dismiss this appeal, they say:

> "If the ordinance were not enforceable, then the conditions prevailing prior to 1924, when it was enacted, would recur and practices of fraud, short weighing and chicanery again prevail. Then the *retail coal industry of Chicago would be demoralized by unfair and unethical competition* * * *." (Italics ours.)

When the City expresses concern for the retail coal industry of the City of Chicago, it thereby discloses that this whole matter has a competitive origin and that the consuming public is to be penalized by being required to pay unnecessary handling charges to protect retail coal dealers, but ostensibly exacted in the name of the police power. Since the only time the City is concerned about this competition is when it results in a saving of a handling charge of somewhere between fifty cents and a dollar a ton to the consumers of the coal, it must be patently clear that the City of Chicago is really trying to protect its local coal yard operators from lawful, legitimate competition resulting from a more efficient method of doing business, and that it is trying to accomplish this under the guise of protecting the public from short-weight.

If the ordinance were not enforcible as to this business, for competitive reasons the saving in the handling charge would have to be passed on to the consumer. This new method of doing business therefore comes in direct competition with the more expensive method of selling through a coal yard. Therefore, if the local dealer can keep all of this cheap coal out of the market he is given a tremendous competitive advantage.

If the City in referring to "unfair competition" means dishonesty in the matter of weights, we submit that there is no reason for saying that the non-resident is less honest than the resident coal dealer. Dishonesty is not a matter of miles. In any event this ordinance does not in any manner protect the consumer from dishonesty. For example, suppose a dealer in Chicago wishes to cheat his customer. He can load the coal over a public weighmaster's scale and obtain a weighmaster's certificate. After he has obtained this he can adulterate the coal, change its grade, take off some of the load, or do any number of

things to cheat his customer so far as this ordinance is concerned. All he needs to comply with this ordinance is the weighmaster's certificate showing the gross, net and tare weights. This certificate is obtained at the scales, but after leaving them there are 3631 miles of streets and 912 miles of paved alleys within the city limits (R. 55) and upon which he can drive and upon which, if he is dishonest, he can cheat his customer. It is therefore clear that the ordinance has no effect whatever in preventing dishonesty after the original weighing. The only ordinance which deals with that question is one imposing penalties for short weight, of which this appellant makes no complaint.

The City's counsel further said in their brief supporting the motion in this Court to dismiss our appeal:

> "To a greater degree the user needs protection when coal is delivered to him by irresponsible, itinerant, part-time truckers using a miscellaneous lot of vehicles instead of regular coal trucks, from a mine 62 miles from Chicago."

However, if the itinerant, irresponsible, part-time trucker buys his coal from, or weighs his coal in a Chicago coal yard, he is supplied with a weighmaster's certificate, and the ordinance in no way regulates him or his business after this weighing. It is not necessary that he present a certificate of good moral character to get a weighing nor must he have a certain standard type of truck. It is therefore apparent that it is only when the mine owner, dealer or trucker attempts to save rehandling charges in Chicago that the City becomes concerned about whether he is "itinerant, irresponsible or part-time."

On its face the ordinance does not concern itself with the question of who should be in the coal business. It

is not ostensibly designed for any other purpose than the certifying of original weighings taking place in Chicago. When, therefore, the City manifests an interest in protecting retail coal dealers by utilizing this ordinance to check weights originally obtained under State laws it would seem clear beyond peradventure that the City by its application of this ordinance intentionally discriminates against appellant's business. What public interest is served by compelling appellant to abandon this business and go into the business of operating a coal yard in Chicago?

If the City of Chicago were honestly enforcing this ordinance for the benefit of the public, as distinguished from "retail coal dealers," it would be interested and concerned in preserving for its residents the inherent saving involved in transporting coal from the mine to the bin of the consumer.

Protection of the public against short weight is to protect the public against paying excessive prices for what it buys. Prohibiting the practice of the economies which the appellant's method of doing business effects is manifestly contrary to the very theory of public welfare which permits the regulation of weights and measures as a branch of the police power and since that prohibition is clearly detrimental to the public welfare, which alone would justify and authorize the regulation of the appellant's business, the police power does not authorize the regulation here assailed. The unreasonable discrimination against the appellant's method of doing this business therefore not only results in the loss of liberty and property of the appellant but also acts to the detriment of the public.

For another reason the burden on the local dealer and the appellant *is not the same.* As pointed out above, the operator of a coal yard in Chicago may be licensed as a

public weighmaster and do his own weighing in his own yard, that is, at the point of original weighing. However, there is no provision for licensing weighmasters outside of Chicago, which is the point of original weighing for coal trucked direct to the consumer. This discrimination goes right to the heart of this case. Prior to the year 1935 the Morris Coal & Mining Company, the seller of the coal here involved, had a license as a public weighmaster. The City of Chicago refused to renew this license on the ground that the scale at the mine was not located in Chicago. It is a fair inference from this record that the real reason that this weighmaster's license was refused on the ground of non-residence was that coal trucked from Morris was becoming a competitive influence in the Chicago market.

The Supreme Court of Illinois, in its majority opinion, cited the case of *State* v. *Nelson*, 66 Minn. 166, 68 N. W. 1066, which held that the City of Minneapolis had the right to inspect dairy cattle located outside the city as a condition precedent to permitting the sale of milk within the limits of the city. That case did not hold that a city could prevent the sale of milk from uninspected cattle and at the same time refuse to inspect the cattle. That, in effect, is what the ordinance here complained of attempts to do. If two different methods of doing a coal business are to be properly treated alike *in being required to weigh coal under the same ordinance* then it is apparent that the ordinance is invalid because it does not permit the equal privilege of becoming a weighmaster *at the point of original weighing.* It unlawfully discriminates against the person who must in the first instance weigh his coal outside the city limits.

It is no answer to this contention to say that the Chicago Inspector of Weights and Measures has no jurisdiction

outside the City of Chicago, because in the case of *Hill* v. *Fetheroff*, 236 Pa. 70, 80 Atl. 677, citing with approval *State* v. *Nelson, supra,* relied upon by the Illinois court, it was held that a municipal officer has the right to make inspections outside of his own city where the inspection is voluntarily submitted to as a condition to doing a certain business within the municipality. Here the City of Chicago makes no offer to extend to the nearby mine, under any circumstances, the privilege which it offers the local dealer; yet it attempts by this ordinance to require the mine to comply with the burdens of the ordinance while denying it the benefits which would permit it to comply with the ordinance in a fair and reasonable manner.

Counsel for the City have heretofore attempted to meet this argument by the suggestion that there is nothing in the ordinance to prevent a downstate coal company from establishing an agent in Chicago as a public weighmaster. This obviously does not lighten the burden imposed by the ordinance on appellant's business. So long as it is necessary in order to comply with the ordinance to unload and reload the coal in the City of Chicago, the appointment in Chicago of an agent as a public weighmaster would not in any way aid appellant; if he must unload his truck in order to comply with the ordinance it makes no difference whether his agent or some other person performs the slight physical act of balancing the beam and reading and certifying the weight as a public weighmaster.

Appellee's further suggestion that the ordinance can be complied with by any legitimate dealer or trucker because the cost of a public weighmaster's certificate is but twenty-five cents per load falls into the same category. It is not the amount of the weighmaster's fee which is objectionable but the method of weighing which requires dumping and rehandling of the load in order to get the certificate.

The appellee's argument that appellant can establish a coal yard in Chicago to avoid the burdensome operation of the ordinance on his business is the same as that made by the Supreme Court of Illinois. It simply means that the public is to be deprived of the savings inherent in appellant's business and the only way he can comply with the ordinance is to go out of his present business and go into an entirely different sort of business. This "solution" neither meets nor answers the question presented. *It is clearly unnecessary to compel a man to establish a coal yard in order to verify a mine weight.*

We submit that the ordinance in question, as applied to the business of trucking coal from mine to consumer after weights have been determined at the mine in accordance with State statutes, is discriminatory in its operation and an unnecessary and unreasonable exercise of the police power. As such, it is unconstitutional and void under Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Respectfully submitted,

THOMAS C. MCCONNELL,
IRWIN T. GILRUTH,
OWEN RALL,
Counsel for Appellant.

Chicago, Illinois,
November 14, 1936.